

**REMARKS****Present Status of Application**

This is a full and timely response to the outstanding non-final Office Action mailed on January 11, 2008. The Office Action has objected to claims 9-12 and 15 because of informalities. The Office Action has rejected claims 2-9 under 35 U.S.C. 112, 2<sup>nd</sup> paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Office Action has rejected claims 9-12 and 15 under 35 USC§103(a) as being unpatentable over Uehara et al. (JP 2000-119156) in view of Wang (CN 1347717), Matsumoto (JP 2000-044481), Kuga (JP 06-256203), Yamamura (JP2003-292432), Watanabe et al. (JP 06-211713), Suwa et al. (JP 2002-047193) and Vorhees (USP 4,034,087). The Office Action has further rejected claim 1 as being anticipated by Tze et al. (WO 02/067960). Finally, the Office Action has rejected claims 1-8 under 35 USC§103(a) as being unpatentable over Tze et al. (WO 02/067960) in view of a web site article [http://web.archive.org/web/\\*/http://holistic-online.com/Herbal-med/Herbs/h356.htm](http://web.archive.org/web/*/http://holistic-online.com/Herbal-med/Herbs/h356.htm), Whittle (US 5,466,452), Huang et al. (US Publication 2003/0165533 A1), Yoshioka et al. (US 6,337,089), Noevir (JP Publication 2003/292432A), Nakayama et al. (US Publication 2003/0198610 A1), Ishikawa et al. (US Publication 2002/01876166 A1), Grollier et al. (US 4,767,618) and Liang et al. (US Publication 2002/0031559 A1).

Applicants have amended claims 9-12 and 15. After entry of the foregoing amendments, claims 9-12 and 15 remain pending in the present application. It is believed that no new matter is added by way of these amendments made to the claims or otherwise to the application.

Applicants have respectfully considered the remarks set forth in this Office Action. Regarding the obvious rejections, it is however strongly believed that the cited references are deficient to adequately teach the claimed features as recited in the presently pending claims. The reasons that motivate the above position of the Applicants are discussed in detail hereafter, upon which reconsideration of the claims is most earnestly solicited.

### **Discussions for Claim Objections**

*The claims are objected to because informalities.*

In this regard, Applicants have amended the claims according to the suggestions offered by the Examiner. It is thus respectfully requested that this objection be withdrawn.

### **Discussions for 35 U.S.C. §112, 2<sup>nd</sup> paragraph rejections**

*Claims 9-12 and 15 are rejected under 35 USC §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.*

Claims 9-12 and 15 are rendered uncertain because the amounts of the ingredients are not set forth in terms of either by “weight” or “by volume” amount of the total composition. Claims 9-12 and 15, which initially recite the volume ratios of respective ingredients, have been amended to more clearly and accurately define a cream for the treatment of dermatitis comprising in volume percent of the claimed ingredients. Withdrawal of the rejection is thus respectfully requested.

### **Discussions for 35 U.S.C. §103 rejections**

*Claims 9-12 and 15 are rejected under 35 USC §103(a) as being unpatentable over Uehara et al. ( JP 2000-119156) in view of Wang (CN 1347717), Matsumoto (JP 2000-044481), Kuga (JP 06-256203), Yamamura (JP2003-292432), Watanabe et al. (JP 06-211713), Suwa et al. (JP 2002-047193) and Vorhees (USP 4,034,087).*

With regard to the 103 rejection of claims 9-12 and 15, Applicants respectfully submit that these claims defined over the prior art references for at least the reasons these prior art references, neither alone nor in combination teaches or discloses each and every element of the claim in issue.

The present invention basically teaches a composition for treating dermatitis. More specifically, claims 9-12 and 15 of the invention teaches the specific main components and the well-balanced concentration of each claimed component for providing the highest therapeutic

effects against atopic dermatitis. To achieve the therapeutic effect of the invention, the composition must include a combination of the main ingredients which consists of lightyellow sophora root (*Sophora flavescens* Ait.), turmeric (*Curcuma aromatica* Salisb.), magnolia bark (*Magnolia officinalis* Rehd. Et. Wils.), moutan bark (*Paeonia suffruticosa* Andr.), isatis leaf (*Isatis tinctoria* L.) and borneo camphor tree (*Dryobalanops aromatica* Gaertn. f.) to provide the antibacterial, antiviral, antiallergic, antiphlogistic, blood-circulation accelerating and anti-itching effects. Although the present invention may include other auxiliary ingredients to enhance the above-mentioned effects, it is essential that the composition includes the claimed main ingredients.

The primary reference Uehara teaches a topical composition that includes one or more plant extracts. The Office alleges that Uehara discloses tumeric, scutellaria baicalensis, sophora flavescens, cnidium rhizome, angelica radix phellodenron amurensis, liquorices, lemon, alcohol, Vaseline, lanolin, salicylic acid, etc. According to the teachings of Uehara, Uehara simply teaches two (tumeric and sophora flavescens) of the six main ingredients of the composition of the claimed invention. Hence, Uehara does not teach or suggest the requisite of using the 6 main components together in combination of various auxiliary components. Moreover, Uehara teaches the content of the plant extract is about 0.005 to 10% by weight, whereas the present invention teaches specifically the content of 1.8 to 2.2 % by volume for tumeric and 2.7 to 3.3 % for sophora flavescens.

With respect to Wang, Wang is directed to Chinese herb medicine materials including Radix Sophorae flavescens, Yinyao, cortex dictamni radices, isatis leaf, herba schizoneptae and broom cypress. Accordingly, Wang only discloses two of the six main components of the invention. Similar to Uehara, Wang fails to teach or suggests a composition that consists of the 6 claimed main components together. Moreover, Wang teaches the content of these ingredients of about 20 to 60 weight percent, while the present invention teaches the content of sophora flavescens is about 2.7 to 3.3 % by volume and the content of isatis leaf is about 0.9 to 1.1 % by volume.

With respect to Matsumoto, Matsumoto teaches a topical preparation using the

following plant extracts : Sophora flavescens, balsam, mint, Japanese angelica root, Sanguisorba officinalis, liquorice, aloe, loofah, scutellaria root, sea weeds, chamomile, gardenia, Kumazasa, mulberry, perilla, Equisetum arvense, Achillea millefolium, carrot, hamamelis, rose, horse chestnut, Ganoderma lucidum, Angelica radix, rosemary, apple, peach, apricot peony, ginger, moutan bark. Again, out of the long list of the ingredients, Matsumoto simply discloses two of the 6 main ingredients of the invention. Accordingly, Matsumoto also fails to teach the composition consisting inclusively the 6 claimed main components of the invention.

With respect to Kuga, Kuga simply teaches an ointment comprising root of Angelica duhurica and root of Scutellaria baicalensis. In other words, Kuga fails to teach or suggest any of the main components of the claimed invention.

With respect to Yamura, Yamura discloses a skin external preparation which contains one sort chosen from Arnica, curcmae rhizome, a St. John's Wort, Uncaria gambir Roxburgh, a Geranium thunbergii Sieb. et Zucc., a magnoliae cortex, a peony, a cnidium rhizome, an angericae radix, Cordyceps sinensis, a jujube tree, a ginseng, Althaea officinalis, a coltsfoot, a Hoelen bamboo, a peach, and creeping saxifrage, or two sorts or more of vegetation, a crude drug, and the extract of a fungus. Accordingly, Yamura simply teaches the use of magnoliae cortex or cnidium rhizome, instead of the 6 main components together required by the claimed invention.

With respect to Watanabe, Watanabe teaches a composition that comprises borneol as a component. Again, Watanabe teaches one of the 6 required main components.

With respect to Suwa and Vorhees, the prior art references fails to teach or suggest the use of any of the 6 required main components.

In summary, these references, neither alone nor in combination, teach or suggest using the 6 main ingredients together in combination with various auxiliary components to achieve the efficacy of the claimed invention. Instead, each of these 8 references simply discloses some of the auxiliary components or one to two of the main ingredients. Applicants respectfully submit to the Office that the fact that a multiplicity of references (over three) is required to meet

an invention may be an indication of nonobviousness. Further, Applicants believe that the Examiner is arguing out of hindsight, finding pieces of the present invention within the prior art and assembling them according to the teaching of the invention. Applicants respectfully remind the Office that it is inappropriate to use hindsight to look back through Applicants' disclosure and declare claim limitations obvious where such declaration can only be guided by the Applicants' disclosure. Moreover, the claimed invention teaches each ingredient in very specific volume percentage, and these features are also absent from the teachings of the prior art references.

Applicants are submitting a series of pictures (Figs. 1-10) showing the results of using the claimed composition for treating dermatitis (Appendix I). As illustrated by the pictures in the Appendix I, the upper photographs show the patients before the treatment, while the lower photographs show the patients after the treatment with the claimed composition. The treatment period is a couple of months. These photographs prove that the present invention provides an excellent effect of treatment which cannot be attained in the prior art as that of the references.

For at least these reasons, Applicants respectfully assert that the prior art references fail to render claims 9-12 and 15 unpatentable. Applicants respectfully assert that these claims also are in condition for allowance. Thus, reconsideration and withdrawal of this rejection are respectively requested.

*Claims 9-12 and 15 are rejected under 35 USC §103(a) as being unpatentable over Tze et al. (WO 02/067960) in view of a web site article [http://web.archive.org/web/\\*/http://holistic-online.com/Herbal-med/Herbs/h356.htm](http://web.archive.org/web/*/http://holistic-online.com/Herbal-med/Herbs/h356.htm), Whittle (US 5,466,452, Whittle hereinafter), Huang et al. (US Publication 2003/0165533 A1, Huang hereinafter), Yoshioka et al. (US 6,337,089, Yoshioka hereinafter), Noveir (JP Publication 2003/292432A, Noveir, hereinafter), Nakayama et al. (US Publication 2003/0198610 A1, Nakayama hereinafter), Ishiakawa et al. (US Publication 2002/01876166 A1, Ishiakawa hereinafter), Grollier et al. (US 4,767,618, Grollier hereinafter) and Liang et al. (US Publication 2002/0031559 A1, Liang hereinafter).*

Similar to the discussion above, these prior art references fail to teach or suggest the

composition containing the 6 claimed main components together and the various auxiliary components. Instead, each of the prior art reference simply disclose the application of some of the auxiliary components or one to two of the main components. Moreover, the components disclosed by some of these references (**Tze, Yoshkoka, Nakayama, Liang, Noveir**) are for treatments of disorders other than dermatitis. Therefore, it is respectfully submitted that the motivation to combine or to modify these references to obtain the claimed invention is lacking because the problems to be solved by these references and the teachings of these references are different from each other and from those of the present invention.

Accordingly, even if these references were combined, the combination still fails to teach the concentration of each and every components of the claimed invention, especially for Isatis Leaf, mouton bark, Baikal skullcap, smartweed, mutton oil, alcohol, white soft paraffin and dimethyl sulfoxide taught in claims 9-12 and 15, since these references teach the different species of turmeric, magnolia bark, mouton bark, smartweed. Accordingly, the combination of these references at least fails to teach turmeric, magnolia bark, mouton bark, smartweed and the concentrations thereof as claimed in claims 9-12 and 15.

For at least these reasons, Applicants respectfully assert that the prior art references fail to render claims 9-12 and 15 unpatentable. Applicants respectfully assert that these claims also are in condition for allowance. Thus, reconsideration and withdrawal of this rejection are respectfully requested.

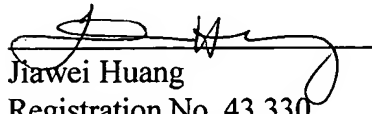
### **CONCLUSION**

In view of the foregoing, it is believed that all pending claims are in proper condition for allowance. If the Examiner believes that a telephone conference would expedite the examination of the above-identified patent application, the Examiner is invited to call the undersigned.

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4 Venture, Suite 250  
Irvine, CA 92618  
Tel.: (949) 660-0761  
Fax: (949)-660-0809

Respectfully submitted,  
J.C. PATENTS

  
Jiawei Huang  
Registration No. 43,330